

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

# KENDALL GATES

## Claimant

VS.

**GREAT EASTERN ENERGY CORP.**

Respondent

AND

**GRANITE STATE INS. CO.**

## Insurance Carrier

Docket No. 195,033

## ORDER

Respondent appeals from a Preliminary Hearing Order of March 23, 1995, wherein Administrative Law Judge Nelsonna Potts Barnes found claimant had established timely notice to respondent of a work-related accident and ordered temporary total disability and medical to date.

## ISSUES

Whether claimant provided notice to respondent within ten (10) days pursuant to K.S.A. 44-520 or whether claimant had "just cause" for failing to provide said notice.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the issues raised herein are issues listed in K.S.A. 44-534a as appealable from preliminary hearing orders and, as such, the Appeals Board has jurisdiction to consider this appeal.

Claimant, a pumper with respondent for two and one-half (2 1/2) years, alleged injury on or about June 21 through June 26, 1994. Initially, claimant thought his injury was in the first week of July, but after further investigation and the presentation of evidence, it was decided June 21, 1994 was the appropriate injury date. Notice to the respondent was not provided until July 15, 1994, with respondent alleging claimant failed to provide just cause for going beyond the ten days allowed under K.S.A. 44-520.

Claimant testified that his job required considerable heavy lifting, with aches and pains being normal at the end of the day. While he noticed a sudden onset of pain on the date of injury, he did not realize the significance of his injury for several days. While working full time for the respondent, claimant's condition continued to worsen until in July 1994 he concluded that his injury was more severe than originally thought and would require medical care. At that time, claimant scheduled an appointment with Dr. Moorehead and notified his employer of the injury.

It should be noted that no Form 40 was posted by the respondent advising claimant that he had only ten (10) days from the date of injury to notify the respondent of the alleged injury.

The Appeals Board, in reviewing the evidence, finds that claimant had just cause for not advising respondent within ten (10) days of the date of accident of the circumstances surrounding the injury. Claimant's job required heavy labor and resulted in aches and pains on a regular basis. While claimant was aware of the sudden onset of pain, it would be understandable that claimant would have difficulty comprehending the significance of his condition or comprehending the necessity for medical care until such time as the injury lasted and, indeed, grew worse over a period of several days.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated March 23, 1995, is affirmed in full and remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Harry Bass, Independence, Kansas  
Matthew Crowley, Topeka, Kansas  
Nelsonna Potts Barnes, Administrative Law Judge  
George Gomez, Director